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5 Attorneys for Plaintiff
6 Environmental Research Center

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11
12 ENVIRONMENTAL RESEARCH) **Case No.:** 30-2012-00606439-CU-MC-CJC
13 CENTER, a California non-profit)
14 corporation,)
15 Plaintiffs,) **COMPLAINT FOR INJUNCTIVE**
16 vs.) **RELIEF AND CIVIL PENALTIES**
17) **[Health & Safety Code § 25249.5, et seq.]**
18 STARWEST BOTANICALS, INC. and) **[UNLIMITED CIVIL CASE - AMOUNT**
DOES 1-50, Inclusive,) **DEMANDED EXCEEDS \$25,000)]**
Defendants,) **Judge Andrew P. Banks**

19 Plaintiff Environmental Research Center, Inc. brings this action in the interests of the
20 general public and, on information and belief, hereby alleges:

21 **INTRODUCTION**

22 1. This action seeks to remedy Defendants' continuing failure to warn consumers in
23 California that they are being exposed to lead, a substance known to the State of California to
24 cause cancer, birth defects and other reproductive harm.

25 2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have
26 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
27 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the
28 following ingestible products, which contain the chemical lead and which have been and

1 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to
2 individuals in California:

- 3 a. Starwest Botanicals Inc. Detox
- 4 b. Starwest Botanicals Inc. Blood Cleanser
- 5 c. Starwest Botanicals Inc. GreenPower Alkalizing Superfood
- 6 d. Starwest Botanicals Inc. Burdock Root
- 7 e. Starwest Botanicals Inc. Relaxation
- 8 f. Starwest Botanicals Inc. Marshmallow Root
- 9 g. Starwest Botanicals Inc. Liver Cleanse
- 10 h. Starwest Botanicals Inc. Licorice Root
- 11 i. Starwest Botanicals Inc. Turmeric
- 12 j. Starwest Botanicals Inc. Fo-Ti Root
- 13 k. Starwest Botanicals Inc. Wheat Grass
- 14 l. Starwest Botanicals Inc. Valerian Root
- 15 m. Starwest Botanicals Inc. Gotu Kola Herb
- 16 n. Starwest Botanicals Inc. White Willow Bark
- 17 o. Starwest Botanicals Inc. Regularity
- 18 p. Starwest Botanicals Inc. Kidney Support

19 These listed products are hereinafter referred to together as “THE PRODUCTS”.

20 3. The use and/or handling of THE PRODUCTS causes exposures to lead at levels
21 requiring a “clear and reasonable warning” under California’s Safe Drinking Water and Toxic
22 Enforcement Act of 1986, Health & Safety Code (“H&S Code”) §25249.5, *et. seq.* (also known
23 as “Proposition 65”). Defendants have failed to provide the health hazard warnings required by
24 Proposition 65.

25 4. The continued manufacturing, packaging, distributing, marketing and/or sales of
26 THE PRODUCTS without the required health hazard warnings, causes individuals to be
27 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.

28 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued

1 organized under California’s Non-Profit Benefit Corporation Law. ERC is dedicated to, among
2 other causes, reducing the use and misuse of hazardous and toxic substances, consumer
3 protection, worker safety and corporate responsibility.

4 11. ERC is a person within the meaning of H&S Code §25118 and brings this
5 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

6 12. Plaintiff alleges on information and belief that Defendant STARWEST
7 BOTANICALS, INC., is a California Corporation.

8 13. Defendant STARWEST BOTANICALS, INC. is a person within the meaning of
9 H&S Code §25249.11(a).

10 14. Each defendant has manufactured, packaged, distributed, marketed, sold and/or
11 have otherwise been involved in the chain of commerce, and continues to manufacture, package,
12 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
13 THE PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that
14 Defendants employ ten or more persons, and are thus each a “person in the course of doing
15 business” within the meaning of Proposition 65.

16 15. Defendants DOES 1-50 are named herein under fictitious names, as their true
17 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
18 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or
19 has otherwise been involved in the chain of commerce of, and continues to manufacture,
20 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of
21 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
22 actionable manner, for the events and happenings referred to herein, either through its conduct or
23 through the conduct of its agents, servants or employees, or in some other manner, causing the
24 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
25 names and capacities of DOES when ascertained.

26 16. Plaintiffs are informed and believe and thereon allege that each of the defendants
27 is in some manner responsible for the events set forth in this Complaint and proximately caused
28 the injuries and damages as alleged in this Complaint.

1 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
2 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

3 22. On October 1, 1992, the State of California officially listed the chemical lead as a
4 chemical known to cause cancer. Lead became subject to the warning requirement one year later
5 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65
6 beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

7 23. Plaintiff is informed and believes, and based on such information and belief,
8 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
9 California without the requisite clear and reasonable warnings. THE PRODUCTS continue to be
10 marketed, distributed and sold in California without the requisite warning information.

11 24. As a proximate result of acts by Defendants, as a person in the course of doing
12 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
13 California, including in the County of Orange, have been exposed to lead without clear and
14 reasonable warnings. The individuals subject to exposures to lead include normal and
15 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE
16 PRODUCTS.

17 25. At all times relevant to this action, Defendants have knowingly and intentionally
18 exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and
19 reasonable warnings to such individuals.

20 26. Individuals using or handling THE PRODUCTS are exposed to lead in excess of
21 the “maximum allowable daily” and “no significant risk” levels determined by the State of
22 California, as applicable.

23 27. At all times relevant to this action, Defendants have, in the course of doing
24 business, failed to provide individuals using and/or handling THE PRODUCTS with clear and
25 reasonable warnings that THE PRODUCTS expose individuals to lead.

26 28. THE PRODUCTS continue to be marketed, distributed, and/or sold in California
27 without the requisite clear and reasonable warnings.

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FIRST CAUSE OF ACTION

(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.*)

29. Plaintiff hereby incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.

30. On January 6, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to Defendant STARWEST BOTANICALS, INC. (“Notice of Violations”). THE PRODUCTS were identified in the Notice of Violations as containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the notices of violations to be given to certain public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- a. Defendant STARWEST BOTANICALS, INC. and the California Attorney General were provided copies by Priority Mail of the Notices of Violations, along with a Certificate of Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies by Priority Mail of the Notices of Violations and Certificate of Merit.
- b. Defendant STARWEST BOTANICALS, INC. was provided, with the Notice of Violations, a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of CCR § 25903.
- c. The California Attorney General was provided, with the Notice of Violations, additional factual information sufficient to establish a basis for the Certificate of Merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

31. The appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants

1 based on the allegations herein.

2 32. By committing the acts alleged in this Complaint, Defendants at all times relevant
3 to this action, and continuing through the present, have violated and continue to violate H&S
4 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
5 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
6 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
7 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
8 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
9 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
10 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
11 and will be used and/or handled by individuals in California, without Defendants providing clear
12 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
13 birth defects and other reproductive harm posed by exposure to lead through the use and/or
14 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
15 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
16 for use and/or handling to individuals in California.

17 33. By the above-described acts, Defendants have violated H&S Code §25249.6 and
18 is therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to
19 provide required warnings to consumers and other individuals who will purchase, use and/or
20 handle THE PRODUCTS.

21 34. An action for injunctive relief under Proposition 65 is specifically authorized by
22 Health & Safety Code §25249.7(a).

23 35. Continuing commission by Defendants of the acts alleged above will irreparably
24 harm the citizens of the State of California, for which harm they have no plain, speedy, or
25 adequate remedy at law.

26 36. Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

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SECOND CAUSE OF ACTION

(Civil Penalties for Violations of Health and Safety Code §25249.5, *et seq.*)

37. Plaintiff hereby incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.

38. On January 6, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to Defendant STARWEST BOTANICALS, INC. (“Notice of Violations”). THE PRODUCTS were identified in the Notice of Violations as containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the notices of violations to be given to certain public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- a. Defendant STARWEST BOTANICALS, INC. and the California Attorney General were provided copies by Priority Mail of the Notices of Violations, along with a Certificate of Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies by Priority Mail of the Notices of Violations and Certificate of Merit.
- b. Defendant STARWEST BOTANICALS, INC. was provided, with the Notice of Violations, a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of CCR § 25903.
- c. The California Attorney General was provided, with the Notice of Violations, additional factual information sufficient to establish a basis for the Certificate of Merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

39. The appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants

1 based on the allegations herein.

2 40. By committing the acts alleged in this Complaint, Defendants at all times relevant
3 to this action, and continuing through the present, have violated and continue to violate H&S
4 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
5 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
6 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
7 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
8 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
9 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
10 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
11 and will be used and/or handled by individuals in California, without Defendants providing clear
12 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
13 birth defects and other reproductive harm posed by exposure to lead through the use and/or
14 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
15 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
16 for use and/or handling to individuals in California.

17 41. By the above-described acts, Defendants are liable, pursuant to H&S Code
18 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
19 relating to THE PRODUCTS.

20 42. Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

21 **THE NEED FOR INJUNCTIVE RELIEF**

22 43. Plaintiff hereby incorporates by reference each and every preceding allegation and
23 paragraph as though fully set forth in this cause of action.

24 44. By committing the acts alleged in this Complaint, Defendants have caused
25 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of
26 equitable relief, Defendant will continue to create a substantial risk of irreparable injury by
27 continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the
28 use and/or handling of THE PRODUCTS.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief against Defendant STARWEST BOTANICALS, INC.:

A. A preliminary and permanent injunction enjoining each Defendant, its agents, employees, assigns and all persons acting in concert or participating with each Defendant, from manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or use in California without first providing clear and reasonable warnings, within the meaning of Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead;

B. An assessment of civil penalties against Defendant, pursuant to Health & Safety Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;

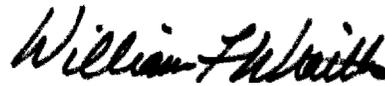
C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code of Civil Procedure §1021.5 or the substantial benefit theory;

D. An award of costs of suit herein; and

E. Such other and further relief as may be just and proper.

Dated: October 19, 2012

WRAITH LAW



By: _____
WILLIAM F. WRAITH
Attorney for Plaintiff Environmental
Research Center